

**REMARKS**

Claims 1 – 11 and 16 are pending in this application. A one-month Petition For Extension Of Time (second month), a Request For Continued Examination (RCE), and the appropriate fees are attached to this paper.

Applicant thanks the Examiner for the brief telephone conversation with the undersigned attorney in which the applicant proposed filing the present Supplemental Response with the included amendments.

The Advisory Action of October 16, 2008 states that the Declaration is conclusive rather than being factual and that the Declaration must relate to the claims. It is respectfully requested that the Examiner re-read the Declaration. Paragraphs 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 are all factual. Paragraphs 12, 14, 17, and 20 all connect the recited facts to specific limitations in the claims. Please note that a statement made in a sworn Declaration concerning what one skilled in the art would understand is considered by the Patent Law to be a factual statement. While there are some conclusionary statements in the Declaration, such as that certain features are novel or patentable, the technical statements, such as to the problems with throttle valves and why one skilled in the art would not use a diffuser 200 as shown in the '025 patent in specific places in the '146 patent, are not conclusionary statements, but are factual statements. If the patent office wants to counter them, it must be by cited specific wording in a reference, or by a sworn affidavit of the Examiner. Unsupported opinions of the Examiner do not suffice. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

It is respectfully submitted that the Office Action and Advisory Action turn the burden of proof of the patent examination process on its head. It is not up to the Applicant to prove that the claims are patentable. Rather the burden is on the Patent Office to provide factual evidence as to why the claims are not patentable. MPEP 2142. The Advisory Action and the previous Office Action do not refer to any factual evidence as to why one skilled in the art would want to put the diffuser of the '025 patent any place in the '146 patent except right before the pumps. That is the only place that the

'025 patent teaches that such a diffuser would be useful. For example, the first line of the abstract states "The present invention provides a diffuser and a chamber for venting and/or pumping gas." (Please note that the foregoing is a factual statement directly citing a reference.) The '146 patent does not teach anything about a diffuser. Yet the Advisory Action and the previous Office Action continually place the diffuser 200 of the '025 patent in many other places in the structure of the '146 patent.

If the amended claims are not considered to be allowable, Applicant hereby respectfully requests an interview with Examiner Chen and his SPE, Examiner Cleveland, at which the requirements of a *prima facie* case and specific MPEP requirements can be openly discussed.

#### **CLAIM REJECTIONS – 35 USC §103**

Claims 1, 3 – 5, and 7 – 11 have been rejected under 35 USC 103(a) as being unpatentable over Bhatnagar et al. (US Patent No. 6,391,146, hereinafter "the '146 Patent") in view of Halsey et al. (US Patent No. 6,663,025, hereinafter "the '025 Patent"). This rejection is respectfully traversed in view of the amendments to the claims. The only immobile FRE disclosed in the cited prior art is the diffuser 200 of the '025 patent, and there is no suggestion that this diffuser be placed anywhere except just before the pumps and has any function other than venting or pumping gas. The arguments with respect to these claims in the response filed October 6, 2008 are hereby incorporated by reference.

Claims 1, 2, 5, and 6 have been rejected under 35 USC 103(a) as being unpatentable over the '146 Patent in view of the '025 Patent. This rejection is respectfully traversed for the reasons given above and the reasons given in the response filed October 6, 2008 which are hereby incorporated by reference.

Claim 16 has been rejected under 35 USC 103(a) as being unpatentable over the '146 Patent. This rejection is respectfully traversed for the reasons given above and the reasons given in the response filed October 6, 2008 which are hereby incorporated by reference.

In view of the above amendments and remarks, Applicant believes the pending application is in condition for allowance. A one-month Petition For Extension Of Time (second month), a

Request for Continued Examination (RCE), and the appropriate fees are attached to this paper. If any additional fee is due, please charge our Deposit Account No. 50-1848, under Order No. 020008.0112PTUS from which the undersigned is authorized to draw.

Respectfully submitted,  
**PATTON BOGGS LLP**

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By: /Carl A. Forest/  
Carl A. Forest  
Registration No.: 28,494  
(303) 894-6114  
(303) 894-9239 (Fax)  
Attorney for Applicant

**Customer No. 24283**